

Issue: Compliance - Grievance Procedure (5-Day Rule); Ruling Date: December 13, 2018; Ruling No. 4822; Agency: Department of Social Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2019-4822
December 13, 2018

The Department of Social Services (the “agency”) has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management in relation to the grievant’s October 17, 2018 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for scheduling the second step meeting.

FACTS

On or about October 17, 2018, the grievant initiated a grievance with the agency.¹ The parties scheduled the second step meeting for November 5. On the morning of November 5, the grievant informed the second step-respondent that she was unable to attend the meeting. The second step-respondent sent the grievant an email message on the afternoon of November 5, advising her that she must attend the second step meeting and requesting that she contact the step-respondent within five workdays to reschedule the meeting for another date.² The grievant does not appear to have contacted the agency after November 5 to schedule the second step meeting or otherwise proceed with her grievance. Based on the grievant’s alleged noncompliance with the grievance procedure, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EEDR’s involvement. Specifically, the party claiming noncompliance must notify the other party

¹ Based on a review of the grievance record, EEDR is unable to determine the precise date on which the grievant submitted her grievance. The agency does not, however, allege that the grievance was not timely filed. For purposes of this ruling, EEDR will assume without deciding that the grievance was initiated on October 17, 2018.

² For purposes of this ruling, EEDR will assume the grievant received the second step-respondent’s email because there is nothing to indicate that it may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

³ *Grievance Procedure Manual* § 6.3.

in writing and allow five workdays for the opposing party to correct any noncompliance.⁴ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EEDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.⁵

Based on a review of the information submitted by the parties in this case, it is evident that the grievant has not taken any action to proceed with her grievance for an extended period of time. Over one month has passed since the second step-respondent's November 5 email to the grievant, and EEDR has reviewed nothing to show that the grievant has contacted the agency about the second step meeting specifically or, indeed, about her grievance in general, during that time.

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievance, the grievant is ordered to contact either the second step-respondent or her human resources office to schedule the second meeting **within ten workdays of the date of this ruling.**⁶ If she does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EEDR's rulings on matters of compliance are final and nonappealable.⁷



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⁴ See *id.*

⁵ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁶ See *Grievance Procedure Manual* § 3.2.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).